

**FINAL REPORT  
OF THE  
COMMISSION ON COURTS**



**Indiana Legislative Services Agency  
200 W. Washington St., Suite 301  
Indianapolis, Indiana 46204-2789**

**November 2005**

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# **Commission on Courts**

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**Mark Goodpaster, Fiscal Analyst  
Timothy L. Tyler, Attorney**

**November 1, 2005**

Assembly Homepage at <http://www.in.gov/legislative/>.

## FINAL REPORT

### **Commission on Courts**

#### **I. STATUTORY DIRECTIVE**

IC 33-23-10-7 charges the Commission on Courts with the following:

1. Review and report on all requests for new courts or changes in jurisdiction of existing courts. A request for review under this subdivision must be received by the commission not later than July 1 of each year. A request received after July 1 may not be considered unless a majority of the commission members agrees to consider the request.
2. Conduct research concerning requests for new courts or changes in jurisdiction of existing courts. The research may include conducting surveys sampling members of the bar, members of the judiciary, and local officials to determine needs and problems.
3. Conduct public hearings throughout Indiana concerning requests for new courts or changes in jurisdiction of existing courts. The commission shall hold at least one (1) public hearing on each request presented to the commission.
4. Review and report on any other matters relating to court administration that the commission determines appropriate, including the following:
  - a. Court fees.
  - b. Court personnel, except constables that have jurisdiction in a county that contains a consolidated city.
  - c. Salaries of court officers and personnel, except constables that have jurisdiction in a county that contains a consolidated city.
  - d. Jury selection.
  - e. Any other issues relating to the operation of the courts.
5. Submit a report in an electronic format under IC 5-14-6 before November 1 of each year to the General Assembly. The report must include the following:
  - a. A recommendation on all requests considered by the commission during the preceding year for the creation of new courts or changes in the jurisdiction of existing courts.
  - b. If the commission recommends the creation of new courts or changes in jurisdiction of existing courts, the following:
    - i. A draft of legislation implementing the changes.
    - ii. A fiscal analysis of the cost to the state and local governments of implementing recommended changes.
    - iii. Summaries of any research supporting the recommended changes.
    - iv. Summaries of public hearings held concerning the recommended changes.
  - c. A recommendation on any issues considered by the commission under subdivision (4).

## **II. INTRODUCTION AND REASONS FOR STUDY**

The legislative branch and the judiciary are separate and co-equal branches of government. The Commission on Courts was established to give the General Assembly adequate time to study legislative proposals that will affect the judicial branch.

## **III. SUMMARY OF WORK PROGRAM**

The Commission met four times during the 2005 Interim to study court-related issues.

At the August 23rd meeting, the Commission heard testimony on the following topics:

- Frank Sullivan, Justice, Indiana Supreme Court, and Mary DePrez, Director, Judicial Technology and Automation Committee (JTAC).
- A staff report that summarized the 2005 General Assembly legislation affecting state courts.
- Testimony of Fred Pfenninger concerning HEA 1113-2005 and its effect on garnishee defendants.
- Testimony of Bob Spears, Marion County Small Claims Court, Perry Township, concerning HEA 1113 and its effect on revenue from Marion County Small Claims Courts.

At the second meeting on September 16th, the Commission heard testimony on the need for a new superior court in Jackson County and a proposal to certain city and town courts to become courts of record if they meet certain criteria.

At the third meeting on October 3rd, the Commission heard testimony on the following issues:

- Creating new courts and magistrates for Marion County;
- Converting two part-time juvenile court referees in Lake County to a full-time juvenile court magistrate;
- Creating new courts for Johnson County; and
- Converting the Madison County Courts into superior courts and allowing the circuit and superior courts into a unified court system.

At the fourth meeting held on October 20th, the Commission heard testimony on the following issues:

- The staffing needs for the Indiana Court of Appeals;
- Efforts to broaden jury selection for Indiana's trial courts;
- Discussion about whether garnishees should be considered defendants for purposes of the civil action fee;
- An overview by Bob Harris concerning the method of excess appeals that courts use to finance a new court;
- Election sequence of Hendricks County courts; and
- Approval of final report.

#### **IV. SUMMARY OF TESTIMONY**

The Commission heard testimony from 23 witnesses during these four meetings on the following topics:

##### **Requests for New Courts or Judicial Officers**

Jackson County: Bill Bailey, president of the Jackson County Chamber of Commerce, Judges William Vance and Frank Guthrie, Prosecuting Attorney Stephen Piersen, and Tom Lantz, an attorney in private practice in Seymour spoke in favor of a new court for Jackson County

Marion County: Judge Cale Bradford, Judge Jane Magnus-Stinson, and John Kautzman, president of the Indianapolis Bar Association, testified about the need for additional courts and magistrates in Marion County.

Johnson County: Judges Mark Loyd and Kevin Barton testified about the need for additional courts in Johnson County.

Lake County Juvenile Magistrate: Mary Beth Bonaventura, Judge of the Lake Superior Juvenile Court proposed eliminating two part-time juvenile referee positions and replacing them with a full-time juvenile court magistrate.

Indiana Court of Appeals: James Kirsch, Chief Judge of the Second District of the Indiana Court of Appeals testified about the growing caseload of the Court of Appeals and the different methods that judges are using to accommodate the added filings that the Court of Appeals receives.

##### **Court Reorganization**

Madison County: Judges Jack Brinkman and Dennis Carroll proposed unifying the county, superior and circuit court in Madison County in a manner similar to Monroe and Delaware Counties. The first step would be to convert the county's two county courts to either superior courts or as part of the circuit court.

City and Town Court Reorganization: Lewis Gregory, Judge of the Greenwood City Court, proposed allowing some city and town courts to be converted into courts of record if they meet minimum requirements of having judges who are attorneys and court rooms with the capacity to record proceedings so that appeals to court decisions in these courts do not require another trial at the trial court level (trial de novo).

Election Sequence of Hendricks County Judges: Representative Jeff Thompson proposed changing the election cycle of the two new judges in the courts created in Hendricks County by the HEA 1141- 2005.

##### **Cleanup of HEA 1113 – 2005**

Two issues were identified as potential problems as a result of HEA 1113 – 2005, which increased or created new court fees.

- Fred Pfenninger of Pfenninger and Associates testified about whether garnishees in

civil cases should be considered defendants and therefore whether plaintiffs in these cases are liable for the civil and small claims action fees when notices are sent to garnishees.

- Judge Bob Spears of the Perry Township Small Claims Court testified that HEA 1113 was silent on where the revenue from the Judicial Salaries Fee that is assessed in cases filed in the Marion County Small Claims Courts that is not the state share should be deposited.

## **Jury Pools**

At the final meeting, John Baker, Judge of the Indiana Court of Appeals, discussed the need to broaden the cross section of the community that could be used to select persons for jury service.

## **V. COMMITTEE FINDINGS AND RECOMMENDATIONS**

The Commission made the following findings of fact and recommendations:

1. Jackson County: The Commission on Courts recommended that a new court be created in Jackson County in the previous interim because Jackson County ranked fourth of all counties in the need for a new court. Yet, at the local level, some officials in the county council have concerns about the additional costs associated with a new court. The Commission recommended by unanimous vote that a new court be created in Jackson County .

	<u>2002</u>	<u>2003</u>	<u>2004</u>
Need	3.60	4.31	4.33
Have	2.40	2.60	2.60
Utilization	1.50	1.66	1.67
Statewide County Average	1.24	1.23	1.23

2. Marion County: Officials in all three of Marion County's branches of government support the creation of new courts and magistrates. While the utilization rate was reduced between 2002 and 2004, Marion County's courts have a large number of county-paid hearing officers. Some Commission members were concerned about the relatively low proportion of elected judges to appointed commission members. Judges from the Marion County Courts testified that Marion County would need 39 additional courts to match the same proportion of elected state-paid judges as the other urban counties in Indiana. The Commission recommended by unanimous vote that legislation be introduced to create two new courts and two new magistrates in 2006 and two new courts and two new magistrates in 2008.

	<u>2002</u>	<u>2003</u>	<u>2004</u>
Need	84.44	82.86	82.93
Have	68.15	72.12	70.79
Utilization	1.30	1.15	1.17
Statewide County Average	1.24	1.23	1.23

3. Reorganization of Madison County Courts: Madison County courts include one circuit



court, three superior courts, and two county courts. The three superior courts operate as unified courts. By statute, county courts are not permitted to hear cases involving injunctive relief or involving partition of real estate liens, paternity, juvenile, or probate, where the appointment of a receiver is asked, or for dissolution of marriage.

Upgrading the two county courts to superior courts will allow for cases in Madison County to be better distributed between judges. In addition, at the state level, this change would not increase state spending because the county and superior court judges both receive the same salary. The Commission recommended by unanimous vote that the Madison County courts be upgraded to superior courts.

4. Specifying Whether Garnishees Are Defendants and Therefore Liable for Civil and Small Claims Action Fees: Under IC 33-37-5-28 a civil action fee of \$10 is collected from the party filing the action for each defendant named in the action. In addition, any party adding a defendant is liable for a civil action fee of \$10. Garnishees are usually either employers or banks. They receive a court order not to release funds held for or owed to a customer or employee, pending further order of the court. At issue is whether garnishees are defendants for purposes of the service fee and whether the party naming the garnishee must also pay a \$10 fee for each garnishee. A preliminary opinion issued by the Office of the Attorney General concludes parties naming garnishees in lawsuits should not be required to pay the service fee for the garnishee since garnishees are not part of the original action. The Commission recommended by unanimous vote that the preliminary opinion issued by the Attorney General be used as a basis for determining whether garnishees should be considered defendants for purposes of IC 33-37-5-28.
5. Specifying Where 25% of the Judicial Salaries Fee Collected in Marion County Small Claims Courts Should Be Deposited: IC 33-34-8-3 specifies that 75% of the revenue from the Judicial Salaries Fee collected in the Marion County township small claims courts shall be deposited into the state General Fund. It is, however, silent about where the balance of the fee revenue is deposited. For city and town courts, 75% of the revenue from the Judicial Salaries Fee is deposited into the state General Fund and 25% remains with the city or town general fund in which the city or town court is located. The Commission concludes that the balance of the fee assessed in Marion County Small Claims Court should be paid to the township general fund. The Commission recommended this measure by unanimous vote.
6. Election Cycle for Hendricks County Courts: HEA 1141 created two new courts in Hendricks County. Elections to choose the judges for these two courts will occur in November 2006. During the same election cycle, Hendricks Superior Courts 1 and 3 will also be up for election. These two courts will result in four new courts being up for election in 2006 and 2012, two courts (Hendricks Circuit and Superior Court 2) being up for election in 2008, and no courts up for election in 2010. Representative Thompson proposes that the initial terms of new courts be for four years. This change would allow for two courts to be up for election every two years rather than an election cycle of four, two, and none. The Commission recommended this measure by unanimous vote.
7. Excessive Levy Review by the Department of Local Government Finance: Under IC 6-1.1-18.5-13 (3), counties can appeal to increase the general levy to offset the additional costs created by new courts. The Local Government Tax Control Board

hears appeals, votes to approve, deny, or modify, and sends the recommendation to the Commissioner of the Department of Local Government Finance. During the reviews of needs for new courts, it became clear that some county council members were reluctant to support the creation of a new court until they were more assured that the State Tax Control Board and the Department of Local Government Finance would include added expenses in local levies associated with new courts. The Commission recommends by unanimous vote that the counties be permitted to receive a preliminary review by the Department of Local Governmental Finance whether they may increase their levy due to the addition of a new court.

8. **Jury Pools:** Both the General Assembly and the Supreme Court have recognized the need to broaden the cross section of local communities that can be used to select jury pools. In Indiana, one of the primary sources that is used to select jury pools is voter registration rolls. Since being selected for jury duty takes time away from work and other pressing issues, people have often not registered to vote to avoid jury duty. Both the Supreme Court and the General Assembly have taken steps in recent years to expand the sources that the local courts can use to identify potential jurors. The Supreme Court has organized a committee composed of trial judges to study proposed lists and recommend changes to the Supreme Court. SB 69–2005 would link the different sources that could be used to select juries in statute with those identified by Supreme Court rule. By expanding the sources that can be used to identify potential jurors, individuals in each county may be less discouraged to register to vote. This proposal was approved for recommendation by the Commission members by unanimous voice vote.

The Commission took no position or vote on the following:

1. **Johnson County:** While Johnson County's utilization rate has increased steadily between 2002 and 2004, their statewide rank was not in the top ten. The Commission made no recommendation for a new court but encouraged the Johnson County judges to continue to update the Commission on the need for new courts in their county.

	2002	2003	2004
Need	6.79	7.38	7.71
Have	5.99	5.99	6.00
Utilization	1.13	1.23	1.29
Statewide County Average	1.24	1.23	1.23

2. **Lake County Magistrates:** The juvenile court in Lake County currently has four magistrates and three part-time referees. The judge proposes eliminating two of these part-time positions and appointing a fifth juvenile court magistrate. Under current law, the Lake County juvenile court may appoint one or more juvenile court magistrates and one or more part-time juvenile court referees. Consequently, the Commission concluded that no additional statutory changes need to be made for Lake County juvenile court to make these changes.

	<u>2002</u>	<u>2003</u>	<u>2004</u>
Need	5.33	5.36	5.66
Have	6.35	6.35	6.35
Utilization	0.84	0.84	0.89
Statewide Court Average	1.27	1.23	1.24

3. Indiana Court of Appeals: The number of cases being reviewed by the Indiana Court of Appeals have increased by one third between 1994 and 2005. As caseloads increase, the courts have responded by reducing the amount of time available for oral arguments and increased the number of attorneys on staff to review the cases and write summaries of the arguments to the courts. While no new courts were proposed during this interim, the Commission on Courts will continue to monitor the need for additional judges for the Court of Appeals.
  
4. Allowing Certain City and Town Courts to Become Courts of Record: City and town courts do not issue a record of their decisions. When a litigant involved in a case filed in a city or town court wishes to appeal a case, the litigant must file a case *de novo* in the county, superior, or circuit court in the county in which the city or town court is located. If the city or town court were a court of record, a party that is unhappy with a decision issued by the city or town court could file an appeal with the Indiana Court of Appeals. City and town courts operate with different statutory requirements and with different financial goals. By IC 33-35-5-7, ten courts are required to have attorneys as judges. Some city and town courts have the capacity to store testimony and evidence on record while other city and town courts use revenue generated by these courts to fund other parts of their local governments. Due to this complexity, the Commission on Courts postponed for another interim examining whether some of these courts could operate as courts of record.

## WITNESS LIST

### August 26<sup>th</sup> Meeting

Frank Sullivan, Justice, Indiana Supreme Court  
Mary DePrez, Director, Judicial Technology and Automation Committee (JTAC)  
Fred Pfenninger, attorney, Pfenninger and Associates  
Bob Spears, Marion County Small Claims Court, Perry Township

### September 16<sup>th</sup> Meeting

Bill Bailey, the president of the Jackson County Chamber of Commerce  
Frank Guthrie, Judge of the Jackson Superior Court  
Stephen Piersen, Prosecuting Attorney in Jackson County  
Tom Lantz, an attorney in Seymour  
Lewis Gregory, Judge, Greenwood City Court  
William Longer, Judge of the Hobart City Court  
William Vance, Circuit court judge

### October 3<sup>rd</sup> Meeting

Cale Bradford and Jane Magnus-Stinson, Marion Superior Court Judges  
John Kautzman, president of the Indianapolis Bar Association  
Mary Beth Bonaventura, Judge of the Lake Superior Court Juvenile Division  
Judges Mark Loyd and Kevin Barton, Johnson County  
Judges Jack Brinkman and Dennis Carroll, Madison County  
Rodney Cummings, Madison County Prosecuting Attorney

### October 20<sup>th</sup> Meeting

Representative Jeff Thompson  
Judge James Kirsch, Indiana Court of Appeals  
Bob Harris, Department of Local Government Finance